133-78

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1495.

WILLIAM A. STUART, APPELLANT,

vs.

A. L. BOULWARE AND LEIGH R. PAGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED OCTOBER 29, 1889.

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1 In the Circuit Court of the United States for the District of West Virginia, at Parkersburg, in Vacation.

WILLIAM A. STUART
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY; WILLIAM W. GORDON and ISAAC H. CARRINGTON, Trustees.

Notice of this motion to all the defendants being proved, and the petition of the plaintiff praying that the court now proceed to act on the prayer of the bill for the appointment of a receiver being read, and all parties to this suit, plaintiff and defendant, having appeared and having been fully heard, it is ordered that A. L. Boulware, of the city of Richmond, be, and he is hereby, appointed by consent receiver of all the estate, both real and personal, of the defendant company.

That the said receiver, before entering upon the performance of his duties as such under this order, shall execute his bond, with sureties, to be approved by the judge of this court and filed with the clerk thereof, in the sum of $50,000, conditioned for the faithful discharge of his duties in the premises.

That upon the filing of such bond with the clerk of this court the said receiver shall proceed to take possession of all and singular the premises whereof he is hereby appointed receiver. He will make an inventory account of said property upon taking possession thereof and file said inventory with the clerk of this court. He will keep a full, clear, and accurate statement of all and singular his acts and doings in the premises and file with the clerk of this court such account monthly during the term of said receivership.

It is further ordered that all monies coming into the hands of said receiver be deposited in some bank of deposit within the State of West Virginia, to be approved by a judge of this court, to the credit of said receiver as such.

2 It is further ordered that the said defendant company and all persons whomsoever be, and they are, strictly commanded and enjoined peacefully to deliver up and surrender to the said receiver all and singular the premises whereof he is hereby appointed receiver, and the marshal of this court is ordered forthwith to deliver the possession of said premises to said receiver.

And it is ordered that until further orders the defendant company shall be allowed to conduct its business of hotel-keeping as it may deem best for the interest of said company and its creditors, and its leases and contracts for the proper conduct of its business already made shall be allowed by the receiver to stand, but the receiver shall collect and account for the receipts of the company, allowing the said company all expenditures necessary economically to conduct its business, and shall report his receipts and allowances monthly to this court.

Given under my hand this 13th day of April, 1883, at 10.30 a. m.

HUGH L. BOND, *C't Judge.*

The bond of the receiver referred to in the foregoing order is in words and figures as follows, to wit:

Know all men by these presents that we, Aubin L. Boulware, Charles U. Williams, and Isaac Davenport, Junior, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars; for the payment whereof we hereby bind ourselves jointly and severally.

Witness our hands and seals this 14th day April, A. D. 1883.

The condition of the above obligation is such that whereas, in a certain suit now depending in the circuit court of the United States for the district of West Virginia, wherein William A. Stuart is
3 plaintiff and The Greenbrier White Sulpher Springs Company, William W. Gordon, and Isaac H. Carrington, trustees, are defendants, the said court, by its order entered in the said cause on the 13th day of April, 1883, has constituted and appointed Aubin L. Boulware receiver of all the estate, both real and personal, of the defendant company:

Now, therefore, if the said Aubin L. Boulware shall well and truly perform all of his duties as such receiver, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) ISAAC DAVENPORT, JR. [SEAL.]
A. L. BOULWARE.
CHAS. U. WILLIAMS. [SEAL.]

(Endorsed:) Approved. Hugh L. Bond, c't judge.

And on another day, to wit, on the 28th day of April, 1883, the following order was made and entered of record, to wit:

W. A. STUART
vs.
GREENBRIER WHITE SULPHUR SPRINGS CO., &c. } In Equity.

This day came A. L. Boulware, receiver, and filed in this cause a report and with it a press copy of the lease entered into between H. Phœbus and the White Sulphur Springs Company, dated Nov. 4, 1882, and the consent of certain creditors thereto (being a large majority of the unsecured creditors), and it appearing from the said report that the said H. Phœbus desires a modification of the said lease to the extent that he shall have the option of discontinuing the same after the first spring's season upon his giving written notice of his purpose to do so on or before the first day of Decem-
4 cember, 1883, and it further appearing that the said company and the said creditors are willing to allow the said modification, the court doth approve and confirm the said lease with the said modification.

And on another day, to wit:

In the Circuit Court of the United States for the District of West Virginia, at Parkersburg.

WM. A. STUART *et al.*
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY *et al.*
} In Equity.

Upon a petition of A. L. Boulware, receiver in this cause.

Upon motion of the petitioner, A. L. Boulware, it is ordered that the said petition be filed and that a rule do forthwith issue against Geo. W. Atkinson, the marshal, and J. S. Atkinson, a deputy marshal, of the United States for this district, to appear before the honorable judges of this court, at Parkersburg, W. Va., on the 22nd day of May, A. D. 1883, to show cause, if any they can, why they and each of them shall not be punished for an alleged contempt of this court in forcibly arresting A. L. Boulware, receiver, &c., at Greenbrier White Sulphur Springs, W. Va., on the 7th day of May, A. D. 1883, and in then and theretofore depriving him, the said Boulware, of the possession of the property and effects of the defendant.

And it is further ordered that copies of the petition and this order, together with the rule aforesaid, be served on the said G. W. and J. S. Atkinson by William A. McCosh, who is specially appointed for that purpose, and the clerk is directed to send copies of the order and petition by mail to Messrs. Hodges Brothers, at Baltimore, Md., and to H. H. Marshall, their counsel, at Richmond, Va.

Balto., Md., May 9, 1883.

And on another day, to wit, on the 11th day of July, 1883, the following order was made and entered of record, to wit:

W. A. STUART *et al.*
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY *et al.*
} In Equity. Upon petition of A. L. Boulware, receiver, &c.

This cause was this day heard upon said petition, which is hereby directed to be filed as of this date, and on consideration thereof it is ordered that R. W. Montague and James Grant Peterkin, sometimes called James Grant, be, and they and each of them are hereby, restrained and inhibited from making any sale of the real estate of the defendant company mentioned in said petition as the said R. W. Montague has advertised to do on the 21st day of July next, and that they are further enjoined and prohibited from disturbing in any manner the possession of the said receiver, his lessees, agents, or employees, in and to said real estate.

(Signed) HUGH L. BOND, *C't Judge.*

6 And on another day, to wit, on August 16th, 1883, the following order was made and entered of record, to wit:

W. A. STUART, ISAAC H. CARRINGTON, & W. W. GORDON, Trustees,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY.

Upon the petition of Harrison Phœbus and the recommendation in writing of A. L. Boulware, receiver, W. A. Stuart, plaintiff, and Tazewell Ellett, attorney, representing a large majority of the unsecured creditors of the defendant company, filed with said petition, it is ordered that the contract heretofore made with the said Harrison Phœbus and confirmed by an order of this court made on the — day of April, 1883, be further modified so as to allow the said Harrison Phœbus for the present year to receive his compensation of five thousand dollars from the income for the present year from the said Springs property after the payment of its running expenses, taxes, and insurance for the said year, the agreement in all other respects as to compensation to remain as it now is.

June 28th, 1883.

(Signed) HUGH L. BOND, *Ct Judge.*

And on another day, to wit:

In the Circuit Court of the United States for the District of West Virginia, at Parkersburg.

WILLIAM A. STUART, in Behalf of Himself and All Other Creditors of the Greenbrier White Sulphur Springs Company Who May Come in and Contribute to the Costs of this Suit, and W. W. Gordon and Isaac H. Carrington, Trustees, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY.

7 This cause coming on by consent of the parties to be heard upon the petition of W. J. Johnston, in behalf of himself and such other creditors of the Greenbrier White Sulphur Springs Company as may come in and contribute to the costs of the same, heretofore presented, and the answer of the Greenbrier White Sulphur Springs Company this day presented and read by Jas. H. Dooley, its counsel, and it appearing from said answer that the said company waiving service of process, notice, and copies of the said petition; that the allegations and statements of said petition are admitted to be substantially true, and that said company, through its counsel, unite in the prayer of said petition for the appointment or continuance of A. L. Boulware as receiver of the two acres more particularly described in said petition; that the said W. J. Johnston and others who may come in as aforesaid are admitted as petitioners and granted leave to be heard in this suit; that the two acres aforesaid and the equity of redemption of the said Greenbrier White Sulphur Springs Company in the property conveyed by the trust

deed or mortgage to William W. Gordon and Isaac H. Carrington, trustees, are continued in the possession and control of A. L. Boulware as receiver and of his lessee, and that such proportion of the rents and profits of the entire property as may, upon proper enquiry under the supervision of this court, be ascertained to arise from or fairly belong to said two acres of land shall be applied to the payment and satisfaction of the judgment due the petitioner and the claims of those who may come in as aforesaid after the priority, amount, and ownership of said judgment and other claims has been properly enquired into and proven under the supervision of this court, and that whenever such foreclosure is had that a decree shall also be entered for the sale of said two acres of land for the satisfaction and discharge of the judgment and other claims due the petitioner and other creditors as aforesaid, if the same shall then remain unsatisfied and a sale of said two acres shall appear to be necessary or proper
8 for the payment of the same.

August 24th, 1883.

HUGH L. BOND, *C't Judge.*

And on another day, to wit, on the 14th day of January, 1884, the following order was made and entered of record, to wit:

W. A. STUART *et al.*
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY *et als.* } In Equity.

Upon motion of the plaintiff, and on consideration of the report of A. L. Boulware, Esq., receiver, this day filed, it is ordered by the court that the same be approved and confirmed, and it is further ordered that Harrison Phœbus, late lessee of the property of the defendant company, within sixty days from the date of this decree, do render an account of his transactions as such lessee before D. C. Gallaher, who is hereby appointed a special master to state and report said accounts to the court, and he is hereby directed to give ten days' notice of the time and place of taking said account to all parties interested.

And it is further ordered that the said receiver shall with all convenient speed and after due notice proceed to rent out the property of the defendant company, with all the rights, privileges, and appurtenances thereto belonging, at public auction, in the city of Richmond, for the term of one year, upon such terms as he may deem most advantageous to the interest of all concerned; but if upon trial the said property cannot be rented at public auction, then the said receiver is authorized to rent out the same privately, but whether rented publicly or privately the lessee is not to take
9 possession or have any benefit of said renting until the same shall be reported to and approved by this court.

And it is further ordered that the said receiver shall without unnecessary delay proceed to make public sale upon the premises for cash of all horses, cattle, and hogs belonging to the defendant com-

pany not essential in his opinion to the due administration of the property in his hands, first giving reasonable notice of the time, place, and terms of said sale.

Jan'y 9th, 1884.

(Signed) HUGH L. BOND,
C't Judge.

The report of the receiver referred to in the foregoing order is in words and figures as follows, to wit:

W. A. STUART, &c.,
vs.
GREENBRIER WH. SUL. SPR'GS CO.

To the Hon. H. L. Bond, judge of the U. S. circuit court for district of W. Va.:

The undersigned, A. L. Boulware, receiver, respectfully reports to the court that Mr. H. Phœbus has rendered him an account of his operations and transactions as lessee of the Springs Company for the year ending December 9th, 1883, showing receipts by him from all sources amounting to ($153,209.48) one hundred and fifty-three thousand two hundred and nine dollars and forty-eight cents, and disbursements amounting to one hundred and fifty-one thousand and ninety-seven dollars and forty-five cents ($151,097.45), leaving a balance of two thousand one hundred and twelve dollars and three cents ($2,112.03), which said balance has been paid over to the receiver by the said H. Phœbus.

Mr. Phœbus claims to have made a profit of twenty-seven thousand one hundred and twenty-seven dollars and twenty cents ($27,120.20), which he shows in his statement under the head of "summary of gains," consisting of cash paid over to the receiver, improvements to property, increase of stocks of wine, provisions, &c., a copy of which said statement is filed herewith, marked "H. P," as part of this report, and an itemized statement of all disbursements made by said Phœbus, lessee, is also filed herewith marked "I," as part of this report.

Mr. Phœbus has, in the exercise of his option under the said lease, determined to surrender the lease, and has turned over to the receiver the property of the said Springs Company. The receiver returns herewith, as a part of this report, a statement, marked "R," of the monies received and the disbursements made by him, showing total amount received two thousand four hundred and seventy-five dollars and seventy-eight cents ($2,475.78), and the amount expended nine hundred and seventy dollars and seventy-nine cents ($970.79), leaving in his hands a balance of fifteen hundred and four dollars and ninety-nine cents. The receiver was directed by decree heretofore entered in this cause to deposit all money received in some bank in West Virginia, but he has not as yet done so because the amount received was so small that he needed or will soon need the same for the current expenses of the property.

The receiver respectfully asks that this cause may be referred to a

master commissioner to audit and settle the accounts of the said H. Phœbus, lessee, and of your receiver.

The property of the Springs Company is now in the hands of the receiver, and, as a sale in all probability cannot be made in time for a purchaser to make preparations for the next spring's season, the receiver recommends that he be allowed to rent it at public auction for one year.

11 Among the assets in the hands of the receiver are a large number of horses and cattle. It is very expensive to keep them over from one season to another, and the policy of hiring them out to the lessee of the property is doubtful. The receiver recommends that they be sold and asks the court for an order to that effect. He also has, as shown by statement of Mr. Phœbus, a large amount of liquors and provisions on hand, which he thinks ought also to be sold.

Respectfully submitted,

(Signed) A. L. BOULWARE, *Receiver.*

Jan'y 8th, 1884.

And on another day, to wit:

In the Circuit Court of the United States for the District of West Virginia, at Parkersburg.

W. A. STUART
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY *et als.*

Upon reading the report of A. L. Boulware, receiver, &c., bearing date Feb'y 29th, 1884, and the exhibits therewith filed, under an order herein entered on the 9th day of Jan'y, 1884, directing him to rent out the property of the defendant company, &c., it is ordered by the court that the proceedings of said receiver had under said order and his report thereof be, and the same are hereby, approved and confirmed.

And it is further ordered that said receiver, from any funds now in his hands or hereafter accruing, do pay off and discharge all taxes now due and unpaid upon the property of said company.

HUGH L. BOND, *C't Judge.*

Teste: L. B. DELLICKER, *Clerk.*

March 14th, 1884.

12 And on another day, to wit, on the 22nd day of January, 1885, the following orders were made and entered of record, to wit:

W. A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY. } In Chancery.

It appearing to the court that there are sundry accounts for wages

of laborers as well as fees of officers against the receiver in this case, it is ordered that the receiver do pay, out of any funds in his hands not otherwise appropriated, unto the marshal of this district all wages due to laborers as well as the fees now due the marshal which have not heretofore been paid by the receiver when the marshal shall present his account and shall file proper vouchers therefor.

WILLIAM A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY and Others. } In Equity.

This cause was this day again heard on the papers formerly read, the report of Special Commissioner D. C. Gallaher, made in pursuance of the decree rendered in this cause on the 9th day of January, 1884, and his report supplemental to his first-mentioned report, and a paper styled by said commissioner "memorandum," to be considered with the said original and supplemental reports and upon exceptions to said reports, and was argued by counsel.

On consideration whereof the court, without at this time deciding any matter in respect to said reports or in respect to the exceptions aforesaid, doth award, judge, order, and decree that the said reports and papers accompanying the same be, and the same are hereby, recommitted to the said special commissioner, D. C. Gallaher, with instructions to reform and restate the same, and to report fully
13 by whom the bonds issued under the trust deed of the 6th day of April, 1882, to Carrington and Gordon, trustees, are held and on what consideration they were issued by the Greenbrier White Sulphur Springs Company, and to report further what amounts, if any, are due from present or former owners of the stock of said company on account of their subscription to stock and what amounts such present or former owner of said stock are liable for by reason of their said ownership; and the said special commissioner is hereby authorized to recall and re-examine any witnesses heretofore examined and to take new testimony, if desired by any party or deemed proper by himself to do so, as to any matter relevant to the subjects of enquiry referred to him by this or any former decree.

And the said special commissioner, D. C. Gallaher, is directed to make report to the court of the matters aforesaid with all convenient speed, together with any matter deemed pertinent by himself or which may be specially required to be stated by any party in interest.

But before taking the account and making the enquiries hereby ordered the said special commissioner shall give due notice to the parties to this cause of the time and place fixed by him for executing this decree; and he shall give further notice of the time and place by publication in some newspaper published in Charleston and Parkersburg, in West Virginia, at least once a week for four successive weeks, and in the said publication he shall warn all creditors of the said defendant company who have not already proved their claims to come in before him and present their claims and the evi-

dence to support the same on or before some day and at some place in the State of West Virginia to be designated by said special commissioner in said publication, and that unless said creditors shall come in and prove their claims they shall be barred from any benefit under this decree; and it appearing to the satisfaction of the court that, owing to the necessity of recommitting the said cause to said special commissioner, the same is not now in condition pro-
14 per to decree a sale of the property of the said Greenbrier White Sulphur Springs Company, and the interests of all concerned will be promoted by again renting out said property, the court doth further adjudge, order, and decree that A. L. Boulware, the receiver of the court in this cause, shall, with all convenient speed and after due notice, proceed to rent out the said property of the said defendant company, with all the rights, privileges, and appurtenances thereto belonging, at public auction to the highest bidder, in the city of Richmond, for a term of one year, to expire on the 30th day of November, 1885, upon such terms as he shall deem most advantageous to the interests of all concerned; but if said receiver, upon trial, cannot rent the said property at public auction, then he is hereby authorized to rent out the same privately, but whether rented publicly or privately the lessee is not to take possession or have any benefit of said renting until the same shall be reported to and approved by this court.

And the court doth further adjudge, order, and decree that the said receiver shall see that the property in his hands, as such receiver, is kept in proper repair, and he is hereby authorized to use so much of the funds in this cause as may be necessary for that purpose, and he shall make due report of any expenditure for such repairs.

January 14th, 1885.

(Signed) HUGH L. BOND, *C't Judge.*

And on another day, to wit, on the 16th day of February, 1885, the following order was made and entered of record, to wit:

WILLIAM A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS Co. } In Equity.

The report of A. L. Boulware, receiver in this cause, bearing date February 6th, 1885, showing his proceedings under the order of January 14th, 1885, herein entered, directing him to rent out
15 the property of the defendant company, being read to the court and duly considered, it is now ordered that said proceedings and the report thereof be, and the same are hereby, approved and confirmed, and that said receiver is directed to take the bond of W. A. Stuart, with George W. Palmer as surety therein, in the penalty of $30,000.00, conditioned for the payment of the rent of said property as the same shall fall due.

February 10th, 1885.

(Signed) HUGH L. BOND, *C't Judge.*

The report referred to in the foregoing order is in words and figures as follows, to wit:

W. A. STUART
vs.
GREENBRIER WHITE SULPHUR SPRINGS CO. and *als.*

To Hon. H. L. Bond, judge of the U. S. circuit court for the district of West Virginia:

The undersigned receiver respectfully reports to the court that in pursuance of the order entered in this cause on the 14th day of January, 1885, and after due advertisement of the time, place, and terms, he offered for rent at public auction, in front of the office of N. W. Bowe, auctioneer, in the city of Richmond, on the 6th day of February, 1885, the property of the Greenbrier White Sulphur Springs Company, with all the rights, privileges, &c., for the term of one season, to expire November 30th, 1885. Mr. Wm. A. Stuart was the highest bidder therefor, and the property was knocked off to him for the sum of twenty thousand dollars ($20,000), one-third to be paid on the first day of July, 1885; one-third on September 1st, 1885, and one-third on November —, 1885. In addition to this, he is to pay three hundred and fifty dollars ($350) for the ice which the receiver had caused to be put away or sawed during the winter. Mr. Stuart
16 proposes to give his own bond, with Mr. George W. Palmer, of Saltville, Va., in the penalty of thirty thousand dollars, conditioned for the payment of the above rent, &c., and for the return of the property in good order and condition. The receiver thinks this will be a good bond. He also thinks that this is the best that can be done with the property for the next season, and he recommends that he be authorized to conclude the lease with the said Stuart.

Respectfully submitted,
(Signed) A. L. BOULWARE, *Receiver.*

Feb'y 6th, 1885.

The following notice is attached to report:

"By N. W. Bowe, real-estate auctioneer.

The Greenbrier White Sulphur Springs of West Virginia.

For rent at public auction.

In pursuance of a decree of the circuit court of the United States for the district of West Virginia, entered in the cause of W. A. Stuart, &c., *vs.* Greenbrier White Sulphur Springs Company on the 14th day of January, 1885, I shall proceed to rent at public auction, in front of the office of the auctioneer, No. 4 North Eleventh street, in the city of Richmond, Va., on Friday, February 6, 1885, the property of the Greenbrier

White Sulphur Springs Company, with all the rights, privileges, and appurtenances thereto belonging, for the term of one season, to expire Nov. 30, 1885.

The property consists of a large hotel and a number of cottage buildings, all completely and comfortably furnished, capable of accommodating 1,500 guests, together with ample stables and servants' quarters. In-
17 cluded in the furniture are all necessary kitchen equipments and utensils, beds, bedding, table-ware, &c., everything necessary to keep a first-class hotel; also all vehicles, necessary harness, and twelve horses.

The whole tract of land contains about 7,000 acres, of which several hundred acres are well adapted to grazing and cultivation.

The virtue of the water and the reputation of the Springs are too well established to require extended notice, as the place has long been one of the most fashionable and popular summer resorts in the United States.

Possession given at once.

Terms: One-third to be paid July 1, 1885; one-third Sept. 1, 1885, and one-third Nov. 1, 1885; party renting to give bond, with approved security, in a penal sum sufficient to cover the rent and to insure the return of the furniture, &c., in good condition.

Parties wishing to rent are invited to inspect the premises.

For further particulars apply to the undersigned at Richmond, Va.

A. L. BOULWARE, *Receiver.*"

And on another day, to wit, on the 20th day of March, 1885, the following order was made and entered of record, to wit:

WILLIAM A. STUART
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. } In Equity.

Upon reading the petition of A. L. Boulware, receiver in this cause, the petition of W. W. Gordon and Isaac H. Carrington, trustees, and the endorsements thereon by the counsel of parties in interest, and the report of A. L. Boulware, receiver, bearing date the 14th day of January, 1885, the court, without now passing upon any question arising in said petitions and report, doth order, adjudge, and decree that the same be, and are hereby, referred to Special Commissioner D. C. Gallaher, Esq., who is hereby ordered to enquire and report—

I. Whether the several items which have been allowed by the receiver as credits, but subject to the decision of the court, viz.,
18 insurance for the year 1883–'84, subsequent to the appointment of the receiver, thirty-seven hundred and forty one $\frac{77}{100}$

dollars ($3,741.77); paid for permanent improvements and repairs, twenty-four hundred and thirty $\frac{2}{100}$ dollars ($2,430.02), January 7th, 1885; and at same date one-half of the account rendered for new articles supplied by lessee, such as crockery, silver, linen, &c., eleven hundred and sixty-nine $\frac{78}{100}$ dollars ($1,169.78), are proper items of credit to be allowed to the lessee, William A. Stuart, in whole or in part, as specified on the face of the report of the receiver, A. L. Boulware, of January 14th, 1885.

II. Also to whom the balance in the hands of the receiver should be paid after reserving enough of the fund to pay necessary repairs and the current expenses of the receiver.

And the said commissioner is ordered to make report with all convenient speed, together with any matter deemed pertinent by himself or specially required by any of the parties.

March 19th, 1885.

(Signed) HUGH L. BOND, *C't Judge.*

The report referred to in the foregoing order is in words and figures as follows, to wit:

WM. A. STUART, &c.,
vs.
GREENBRIER WHITE SULPHUR SPRINGS CO.

To the Hon. Hugh L. Bond, judge of the U. S. circ't court for the dist. of W. Va.:

The undersigned receiver respectfully makes to the court the following report in regard to the rent for the property for the season of 1884. The lessee, W. A. Stuart, gave his bond for the said rent (including ice furnished) for twenty-six thousand eight hundred
19 and fifty dollars $26,850 00

He has made with the receiver a settlement of the said bond as follows, to wit:

Aug. 2d, '84.	Paid cash	$2,000 00	
Oct. 15th, '84.	Paid cash	2,500 00	
	Paid insurance for year 1883 before appointment of receiver. This am't the rec'r allows as a credit, subject to decision of the court	3,741 77	
Nov. —, '84.	Paid cash	145 79	
Dec. 31st, '84.	Paid cash	3,728 02	
Jan'y 7th, '85.	Paid for permanent improvements and repairs—allowed by receiver subject to c't's decision	2,430 02	

Jan'y 7th, '85. This am't allowed by rec'r subject to decision of the court, being one-half of the acc't rendered for new articles supplied by lessee, such as crockery, silver, linen, &c.	1,169 78	
Jan'y 7th, '85. Paid cash	11,134 67	
	$26,850 00	$26,850 00

The receiver gave the said lessee his receipt for $11,134.62 as balance in full of his bond, provided the said items of $3,741.77 and $2,430.02 and $1,169.78 should be allowed by the court; otherwise the said $11,134.62 to be considered as a credit upon the said bond.

The said item of $3,741.77 was for a note given by the White Sulphur Springs Company and endorsed by W. A. Stuart, which was for the insurance on the property of the said company for year 1883, and was paid by said Wm. A. Stuart.

The item of $2,430.02 was for improvement and repairs necessary for the preservation of the property, an itemized acc't of which was exhibited to the receiver.

The item of $1,169.78 is one-half the account paid by the said lessee for new articles purchased by him, and which were necessary for the proper conduct and management of the property. By the terms of the lease the lessee was to return the property to the company in good condition, ordinary wear and tear excepted. As he had to make these purchases to supply deficiencies, the receiver thought it fair to allow him credit for one-half of the amount paid for them, and the said purchases or so much as remained thereof now to belong to the company. The receiver now has in his hands, subject to the order of the court, the said amount of $11,134.62.

Respectfully submitted,

(Signed) A. L. BOULWARE, *Receiver.*

Jan'y 14, 1885.

And on another day, to wit, on the 26th day of October, 1885, the following order was made and entered of record, to wit:

W. A. STUART
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. } In Equity.

It is ordered by the court that A. L. Boulware, receiver, be, and he is hereby, authorized to retain to his own use, out of any funds in his hands as such receiver and on account of his services, the sum of thirty-five hundred ($3,500.00) dollars, and he is further authorized to pay to Leigh R. Page, Esquire, the sum of eighteen hundred ($1,800) dollars on account of his services as counsel to said receiver; and the said A. L. Boulware is further directed to settle his accounts as receiver before a master or the auditor of this court.

The following account of the receiver was filed in the clerk's office in pursuance of the foregoing order:

The Greenbrier White Sulphur Springs Co. in Acc't with A. L. Boulware, Receiver.

Dr.				Cr.	
1883.					
Apr. 20	To cash paid for blank book in which to keep this acc't		60		
20	To cash, expenses of receiver to Parkersburg & thence to Springs to take charge of property		55 25		
May 5	To cash paid for telegram to James Ware		82		
" 5	To cash paid for telegram to Judge Bond		54		
" 5	To cash paid for telegram to Jas. Ware		1 09		
" 5	To cash paid for telegram to Jas. Ware		55		
12	To cash paid, expenses of receiver to Springs, Charleston, Balto., &c.		67 50		
25	To cash paid, expenses of receiver and part expenses R. L. Page, Esq., att'y, to Parkersburg and back		78 75		
25	To cash paid for telegram to Jas. Ware and Judge Bond		79		
28	To cash paid for telegrams to Mess. Robertson, Ware, Stuart, & Tabb		2 00		
31	To cash paid, expenses of receiver to Springs, telegrams, &c.		13 50		
July 11	To cash p'd, expenses of receiver to Springs to make arrangements for taking inventory &c. (Part expenses of this trip charged to another acc't)		7 00		
Aug. 30	To cash p'd for telegram from Springs		67		
Sep. 7	To cash p'd for telegrams from Stuart (.82) and Tabb (.40)		1 22		
7	To cash p'd for telegram from Col. Tabb		64		
Oct. 8	To cash p'd for telegram from Col. Tabb		40		
Oct. 17	To cash paid, expressage on inventory, &c., to cl'k of c't at Parkersburg		50		

1883.				1883.			
Nov.	1	To am't forwarded	231 82	Nov.	9	By cash, am't rec'd of Mr. H. Phœbus, lessee, in settlement of his acc't with receiver—	
"	9	To cash, exp. of receiver to Springs to settle with Mr. Phœbus	17 70			Cash 125 18	
Dec.	4	To cash sent Jas. Ware to pay off labor, &c., for November	134 85			C'k of Judge Jackson 70 25	
	15	To cash paid Jas. Ware for 1 mo's services	175 00			Dr'ft of W. A. Stuart 1,916 60	2,112 03
	28	To cash paid M. F. Pleasants, Esq., clerk of U. S. cir. c't, at Richmond	5 00		23	By cash rec'd from Jas. Ware, being am't rec'd by him from sale of water, stock, &c.	282 10
1884.				1884.			
Jan.	3	To cash paid thro' Jas. Ware, pay-roll for December (1883)	106 42	Jan.	3	By cash rec'd thro' Jas. Ware from sale of water, &c.	81 65
	9	To cash, exp. of rec'r & counsel to Baltimore & Alexandria, &c., $30 & $24	54 00	Feb.	2	By cash rec'd thro' Jas. Ware for water, butter, &c., sold by him	23 04
	9	To cash p'd for telegrams to and from Jas. Ware	76				
	15	To cash p'd for telegram to Jas. Ware	61				
	18	To cash p'd for 100 circular envelopes stamped to send out hand-bill announcing renting of Springs	1 14				
	24	To cash p'd for telegram to Jas. Ware	1 25				
Feb.	2	To check to Jas. Ware to pay labor for storing ice, &c.	310 62				
	8	To cash p'd Dispatch Co. for advertising public renting of Springs	73 50				
	11	To cash p'd M. Ellyson & Co., agents, for having same advertisement inserted in Baltimore American and Kanawha Gazette	53 70				
Feb.	21	To am't brought forward	1,166 37	Feb.	21	By am't forwarded	2,498 82
	21	To cash p'd, auctioneer's fee, sale of cattle, &c.	7 50			By cash, total receipts from sale of cattle at Springs (19th)	1,470 25
	21	To cash p'd, exp. of rec'r to Springs to see about sale of horses, cattle, &c.	18 50		21	By cash, total rec'd from sale of horses, same day	2,531 50
Mar.	3	To cash p'd Dispatch Co. for advertising	22 50				
	3	To p'd Greenbrier Independent for adv't'g	5 00	Mar.	3	By cash rec'd from sale of water, &c., thro' James Ware	33 25

The Greenbrier White Sulphur Springs Co. in Acc't with A. L. Boulware, Receiver—Continued.

DR.				CR.			
23							
1884.				1884.			
Mar.	3	To cash sent Jas. Ware to pay labor, &c. (Feb.)	106 08	Mar.	18	By cash from Jas. Ware, sales, &c.	22 80
	17	To cash p'd for telegram to Maj. Eakle	50	Apr.	—	By cash rec'd from H. Phœbus in payment of bill of wines and liquors bo't from receiver	2,046 44
	17	To p'd Jas. Ware in full to 19th	583 33	Jun-	21	By cash rec'd from Mess. Lilly, Rogers & Co., for water	20 00
	18	To cash p'd exp. counsel (L. R. Page, Esq.) and of rec'r to Balto.	40 00		24	By cash proceeds of note of W. A. Stuart and others discounted this day	2,576 16
	18	To cash p'd exp. of J. McKenney to Springs to take inventory and turn over the property for the rec'r to the lessee	16 90			(This note was given for provisions, &c., bought of receiver.)	
	28	To cash p'd James Knight, sheriff Greenbrier Co., for taxes on company's property, real and personal, for years 1882 & '83	5,618 75				
	31	To cash p'd for telegram to Col. Tabb	40				
May	1	To cash p'd express ch'g's on Co.'s books to and from Springs	3 20				
Jun-	12	To cash p'd J. C. Alderson, Esq., Wheeling, W. Va., balance due for insurance on buildings, &c.	299 13				
	30	To cash p'd for telegram to J. C. Alderson	51				
July	3	To cash p'd J. C. Alderson on acc't of insurance due	1,000 00				
Aug.	13	To am't brought for'd	8,888 67				11,199 22
	13	To cash, expenses of receiver to Springs to attend the settling of the account of H. Phœbus, lessee, before com'r	26 00	Aug.	—	By cash rec'd of W. A. Stuart on account of rent	2,000 00
	13	To cash p'd for telegram to J. C. Alderson	45	Oct.	15	By cash rec'd of Maj. Eakle, to be credited on acc't of rent due by W. A. Stuart and others	2,500 00
	27	To cash p'd J. C. Alderson, Wheeling, W. Va., on acc't of premiums due for insurance of company's property in Greenbrier county, W. Va.	2,000 00	Dec.	31	By cash rec'd of Maj. Eakle on account of rent due by Stuart and others	3,728 02

Sep.	—	To cash p'd L. B. Dellicker, Esq., clerk of U. S. cir. c't, at Parkersburg, his fees	66 45	1885. Jan'y	7	By cash rec'd of W. A. Stuart for himself and others for rent of Springs	11,134 62
	24					NOTE.—This is to be in full of rent due, provided certain expenditures named in statement rendered by W. A. Stuart, &c., are allowed by the c't, to wit: Cash p'd for fixing ice pond, p'd this to Maj. Eakle, $145.79.	
Oct.	17	To cash p'd draft of J. C. Alderson, Esq., for balance of insurance premiums due for insurance	1,427 50			Cash paid for permanent improvements and repairs	2,430 02
Dec.	17	To cash p'd for telegram to D. C. Gallaher	35			½ of am't paid for new articles supplied, such as linen, crockery, silver, &c.	1,169 78
	19	To cash p'd exp. of receiver to Balto. to obtain decree for re-renting springs	18 50			Which said amounts, together with the amounts paid heretofore, viz., Aug. 2d, 1884	2,000 00
	31	To cash p'd Jas. Knight, sheriff, &c., taxes on the Springs property	3,728 02			Oct. 15th, '84	2,500 00
1885.						Dec. 31st, '84	3,728 02
Jan'y	7	To cash p'd Maj. B. F. Eakle to pay exp. (labor, &c.) at springs	250 00			And the $11,134.62 paid this day make the amount due for rent, viz:	26,850 00
Jan.	19	To amount forwarded	$16,405 94			By am't forwarded	$30,561 86
	19	To cash p'd Dispatch Company for publishing notice of taking of acc'ts by the commissioner	16 00				
	19	To cash sent Jos. Fudge, treas. of Alleghany Co., Va., to pay taxes ('83 and '84) on lands in his county owned by the Springs Company	24 62				
	19	To cash paid G. W. Atkinson, U. S. marshal for dist. of W. Va., fees in "W. A. Stuart and *als. vs.* Montague & Peterkin"	44 00				
	21	To cash p'd for stamped envelopes to send out circular announcing the public renting of the Springs property	1 25				
	25						
Jan.	22	To cash sent Maj. B. F. Eakle to pay for cutting and housing ice for season of 1885	250 00				

The Greenbrier White Sulphur Springs Co. in Acc't with A. L. Boulware, Receiver—Continued.

DR.				CR.	
1885.					
Feb. 6	To cash sent Maj. Eakle for balance of expenses and for services of self and employees from Dec. 24th, 1884, to date, as per account rendered	285 60			
6	To cash paid Maj. Eakle, balance due for cutting and housing ice, &c., as per account rendered	50 00			
Feb. 9	To am't forwarded		17,077 41		
9	To cash p'd Dispatch Co. for advertising and for printing	5 40			
9	To cash p'd M. Ellyson & Co., agents, for advertising Springs for rent and the public renting of them in "Balto. American" and other out-of-town papers	69 15			
12	To cash p'd N. W. Bowe, auctioneer, for crying Springs at public renting	25 00			
16	To cash p'd Harlow & Argabrite (Greenbrier Independent) for advertising public renting, &c.	12 00			
May 2	To cash p'd J. V. Loughney, stenographer, for taking depositions of Wm. A. Stuart and Geo. L. Peyton to be used in this suit, and for making copies of same	38 10			
"	To cash p'd N. W. Bowe, the amount paid by him to Dispatch Co. for advertising Springs for rent	76 50			
"	To cash p'd for telegram of Maj. Eakle	31			
Jun- 29	To cash p'd clerk U. S. court, at Charleston, W. Va., for copy of decree of sale in "Gay *v.* Greenbrier Wh. Sul. Spr. Co."	2 15			

Jul-26	13	To cash p'd, draft of Mess. Alderson and Atkinsen, Wheeling, W. Va., on acc't of insurance	1,000 00				
July	22	To am'ts forwarded	$18,306 02	Dec.	19	By cash rec'd from W. A. Stuart, Esq., lessee, on acc't of rent due	$30,561 86
	22	To cash p'd for telegrams sent by Mess. McGuire & Ellett, fixing day for hearing case and notifying counsel	6 75				4,152 07
Aug.	18	To cash p'd, expenses of receiver to Spr'gs to attend hearing of case	30 00				
	20	To cash p'd Mess. Alderson & Atkinson on account of insurance	2,000 00				
Sep.	16	To p'd Mess. Alderson & Atkinson on account of insurance	2,000 00				
Oct.	23	To cash p'd Leigh R. Page, Esq., counsel, his exp. to Parkersburg	75 00				
	29	To cash sent Alderson & Atkinson on acc't of insurance	250 00				
	30	To cash p'd, fees of L. B. Dellicker, Esq., cl'k U. S. c't, at Parkersb'g	21 60				
Nov.	2	To cash paid Leigh R. Page, Esq., counsel, under order of court entered Octo. 27, '85	1,800 00				
	2	To cash retained by receiver for his services under order of same date	3,500 00				
	12	To cash paid D. C. Gallaher, Esq., com'r, fees and expenses allowed him by court under order entered at Parkersburg	863 50				
Dec.	19	To cash paid, taxes & insurance on horses, 10.08	4,152 07				
"	19	To cash p'd, fees of G. W. Atkinson, late U. S. marshal, under order Oct. —, '85	574 34				
"	19	To cash p'd J. C. Alderson, bal. ins. '85	338 74				
			$33,918 02				$34,713 93

27 And on another day, to wit, on the 27th day of October, 1885, the following order was made and entered of record, to wit:

WM. A. STUART
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO., etc., } In Equity.

This cause coming on to be further heard upon the papers formerly heard, and the report of Special Commissioner D. C. Gallaher, made under an order entered herein on the 19th day of March, 1885, said report having been filed in the clerk's office of this court on the 25th day of April, 1885, and no exceptions having been filed thereto, on consideration whereof the court doth adjudge, order, and decree that said report stand confirmed so far as it relates to the allowance to Wm. A. Stuart, as lessee, of credit by the items of $3,741.77, $2,430.02, and $1,169.78, the court being of opinion that said Stuart was, in his settlement with the receiver, entitled to receive credit by said amounts.

But the court doth overrule so much of said report as relates to the payment to said Stuart, in part discharge of the lien held by him as the vendor of the White Sulphur Springs property to the Greenbrier White Sulphur Springs Company, of such balance as may remain in the hands of the receiver after reserving thereout an amount sufficient to pay for necessary repairs and current expenses, the court being of opinion that in the present condition of this case it would be premature to decide whether said Stuart is or is not entitled to receive and apply the same to the discharge in part of his lien as vendor.

And the court doth order that the receiver lend out, so that the same bear interest at the rate of six per centum per annum, such balance as may be in his hands; but, before making any such loan, he shall first obtain the approval of one of the judges of this court.

And on another day, to wit, on the 3rd day of February, 1886, the following order was made and entered of record, to wit:

28 WM. A. STUART and Others
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. *et al.* } In Equity.

Upon consideration of the report of A. L. Boulware, receiver, &c., dated Jan'y 18th, 1886, to be filed as of this date, it is ordered that said report be, and the same is hereby, approved and confirmed.

And it is further ordered that said receiver do with all convenient speed rent out, either at public auction or privately, as he may deem most expedient, the property of the defendant company, with all the rights, privileges, and appurtenances thereto belonging, for the coming season, beginning on the first day of March next and ending on the 1st day of December next, but whether rented publicly or privately the lessee is not to take possession or have any benefit of

said renting until the same shall be reported to and confirmed by this court.

And the said receiver in settling with the lessee for the rent due the past season is specially authorized, for the reasons stated in his said report, to allow the lessee the credits therein recommended.

As to the residue of the rents due from said lessee the court will not at this time order its payment, but said lessee shall hold himself in readiness to pay the same, with interest thereon at six per cent., whenever required by an order of this court or the receiver.

And the said receiver is further authorized to sell, either publicly or privately, the twelve horses mentioned in his report as injured and of little service.

The report of the receiver referred to in the foregoing order is in words and figures as follows, to wit:

W. A. STUART, &c.,
vs.
GREENBRIER WHITE SULPHUR SPRINGS CO. & *al.*

To the hon. judges of the United States circuit court for the
29 district of West Virginia:

The undersigned receiver respectfully makes to the court the following report:

Mr. W. A. Stuart, the lessee of the property of the Greenbrier White Sulphur Springs Company for the last season, has paid on account of his rent the sum of four thousand one hundred and fifty-two dollars and seven cents ($4,152.07), the said sum being the amount of taxes on the property for the year 1885. Besides this he has presented to the receiver an account, filed herewith, marked Exhibit "W. A. S.," for labor and repairs put upon the property, amounting to $2,837.96. After investigating the account the receiver is convinced that the said amount was expended in labor and repairs upon the property that were absolutely necessary for its preservation, and he thinks the same ought to be allowed as a credit upon the rent due by the said lessee.

The said lessee has also presented to the receiver an account, filed herewith, marked Exhibit "W. A. S., No. 2," of furniture and furnishings bought by him for the year 1885, amounting to $1,904.05. These articles, the lessee claims, were necessary in consequence of the deficiency occasioned by the natural wear and tear of the furniture. In the case of a similar account presented by the lessees for the year 1884 the court allowed them a credit of one-half of the amount on their rent, upon the agreement that the articles so purchased should be the property of the Springs Company. The lessee is willing to make the same settlement this year, and the receiver has agreed to it, subject to the approval of the court.

If these credits are allowed the lessee will still owe a balance of over $12,000. The court, by an order entered in this cause on the 27th day of October, 1885, directed the receiver to lend out this amount at six per cent., subject to the approval of the court. Mr.

W. A. Stuart has applied to the receiver to allow this amount
30 to remain in his hands at six per cent. interest per annum, subject to call at ten days' notice, and Mr. George W. Palmer, the surety on Mr. Stuart's bond for the said rent, has agreed to consider himself still bound in case the said arrangement is made, as shown by his letter to the receiver, filed herewith, marked "Exhibit G. W. P."

The receiver recommends that this arrangement be made, as it will be very difficult to lend out money at six per cent. subject to call, and the money will have to be called in from time to time to pay insurance, taxes, and other incidental expenses.

Included in the property of the Springs Company are twelve horses which were reserved when the other horses were sold. The receiver is informed that some of them are now injured and others are of but little service, and he recommends that he be allowed to sell them at public auction or private sale.

The property of the Springs Company has been returned by the lessee to the receiver, and he asks that he be authorized by the court to rent the same for the next season.

Respectfully submitted,

(Signed) A. L. BOULWARE, *Receiver.*

And on another day, to wit, on the 1st day of March, 1887, the following order was made and entered of record, to wit:

WM. A. STUART *et al.*
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY *et al.* } In Equity.

This day A. L. Boulware presented to the court his report, bearing date February 15th, 1887, which is ordered to be filed; and, it appearing to the court that it is to the interest of all concerned that the property known as the White Sulphur Springs property should be rented out for the current year, it is ordered that the receiver do,
with all convenient speed, after ten days' notice in some
31 newspaper published in the city of Richmond, Virginia, rent out at public auction, without any unnecessary delay, the property of the defendant company, with all the rights, privileges, and appurtenances thereto belonging, for the coming season, beginning March 1st and ending December first, 1887, but the lessee is not to have the benefit of said renting until the same is confirmed by the court.

The report of the receiver referred to in the foregoing order is in words and figures as follows, to wit:

W. A. STUART, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPR'GS CO.

To the hon. judges of the circuit court of the United States for the dist of West Va.:

The undersigned receiver respectfully makes to the court the following report:

Mr. W. A. Stewart, the lessee of the Greenbrier White Sulphur Springs property for the last season, has paid on account of his rent the sum of ($–,298.06) thirty-two hundred and ninety-eight and $\frac{6}{100}$ dollars, the said sum being the amount of taxes on the property for the year 1886. Besides this, he has presented to the receiver an account, filed herewith, marked Exhibit "W. A. S., 1886," for labor, repairs, and material, &c., put upon the property, amounting to sixty-five hundred and seventy-nine and $\frac{56}{100}$ dollars ($6,579.56), and has exhibited to the receiver vouchers for all the items embraced in said account. The receiver made personal inspection and examination of the said improvements and repairs, and he is of opinion that they were absolutely necessary for the preservation of the property. The buildings are very numerous. They were poorly built in the beginning, are now getting old, and are generally in very bad
32 condition—so much so that the receiver is convinced that they cannot be kept habitable without an annual expenditure of at least five or six thousand dollars. The receiver thinks that the said amount ought to be allowed as a credit on the rent due by the lessee.

The said lessee has also presented the receiver an acc't, filed herewith, marked "Exhibit W. A. S., 1886–'2," of furniture and furnishings bought by him for the year 1886, amounting to ($3,137.41) thirty-one hundred and thirty-seven and $\frac{41}{100}$ dollars. These articles the lessee claims were necessary in consequence of the deficiency occasioned by the natural wear, tear, and breakage of furniture, &c. In the case of similar accounts presented by the lessees for the years 1884 and 1885 the court allowed them a credit of one-half of the amount on their rent upon the agreement that the articles so purchased should be the property of the Springs Company. The lessee proposes to make the same settlement this year, and the receiver has agreed to it, subject to the approval of the court. If these credits are allowed, the lessee will still owe on his rent for the year 1886 a balance of over eighty-five hundred dollars ($8,500), which balance he represents that he is ready to pay as soon as the court passes upon his settlement. The property of the said Springs Company has been returned by the lessee to the receiver, and as it is now very evident that a sale of the same cannot be made in time for a purchaser to prepare for the next season, the receiver respectfully recommends that the property be rented for the next season and asks that he be authorized to do so at once by public auction.

Respectfully submitted,
(Signed) A. L. BOULWARE, *Receiver.*

Feb'y 15th, '87.

33 And on another day, to wit, on the 20th day of July, 1887, the following order was made and entered of record, to wit:

WILLIAM A. STUART *et al.*
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. *et al.* } In Chancery.

On consideration of the report of A. L. Boulware, receiver, &c. bearing date February 15th, 1887, to be filed as of this date, it is ordered that the same be approved and ratified.

And it is further ordered that said receiver, in settling with the lessee for the rent of the last season, is specially authorized to credit him by the sum of six thousand five hundred and seventy-nine $\frac{56}{100}$ dollars, the amount of labor and material expended by him upon the demised premises, and by the further sum of fifteen hundred and sixty-eight $\frac{70}{100}$ dollars, one-half of the value of the furniture and furnishings supplied by him during the past season and rendered necessary by natural wear and tear and breakage; but upon the allowance of such credit all of said furniture and furnishings shall become the property of the defendant company. The balance due upon the said rent of the last season shall be paid upon the demand of the receiver, who is hereby directed to collect the same.

And on the 25th day of April, 1887, the following report of the receiver was filed in the clerk's office of said court:

W. A. STUART, etc.,
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS COMPANY.

To the honorable the judges of the United States circuit court for the district of West Virginia:

The undersigned receiver respectfully reports to the court that in pursuance of the decree entered in this cause on the 19th day of Feb'y, 1887, he offered for rent at public auction, at the office of W. W. Bowe, real-estate agent, in the city of Richmond, Virginia,
34 on the 5th day of March, 1887, the property of the Greenbrier White Sulphur Springs Company, with all the rights, privileges, and appurtenances thereto belonging, for the season beginning March 1st, 1887, and ending December 1st, 1887.

The time and place and terms of rent had been advertised as directed in said decree. The said property was offered upon the following terms: One-third to be paid July 1st, 1887; one-third September 1st, 1887, and one-third November 1st, 1887.

Mr. William A. Stuart was the highest bidder for the property, and it was knocked off to him for the sum of $20,000.

Mr. Stuart has signed the contract of lease and given to the undersigned a bond in the penalty of $30,000 for his faithful compliance therewith, with G. W. Palmer and H. C. Stuart as his sureties; which said lease and bond have been taken subject to the approval of the court. The undersigned thinks the said rental a fair one, and believes the said bond to be perfectly good. The said William A. Stuart

has paid over to the undersigned the sum of $8,407.00, being the balance in full due by him on the rent for the season of 1886, after allowing him the credits as reported in the report of the undersigned, filed in this cause on the 19th day of Feb'y, 1887.

Respectfully submitted,

(Signed) A. L. BOULWARE, *Receiver.*

Copy of printed notice is filed with this report, and it is endorsed on back as follows:

"The contract of rental reported within is approved.

"(Signed) HUGH L. BOND."

35 And on another day, to wit, on the 7th day of January, 1888, the following order was made and entered of record, to wit:

W. A. STUART and Others
vs.
THE GREENBRIER WHITE SUL. SP'GS Co. and Others.

THE GREENBRIER WHITE SUL. SP'GS Co. and Others
vs.
W. A. STUART and Others.

WM. KNABE & Co., Who Sue, &c.,
vs.
THE GREENBRIER WHITE SUL. SPRINGS Co. & Others.

} In Chancery.

Decree.

These three causes came on this day to be again further heard together, and were argued by counsel; and it appearing from the report of sale made by Special Commissioners Alex'r F. Mathews, A. L. Boulware, Tazewell Ellett, and L. B. Dellicker, pursuant to the decree rendered on the 20th day of July, 1887, which report was filed on the 3rd day of November, 1887, and to which there is no exception, that the said commissioners, in accordance with the provisions and requirements of said decree, sold the properties thereby directed to be sold, being all the properties, real and personal, of the Greenbrier White Sulphur Springs Company, at public auction, on Thursday, the 15th day of September, 1887, at the White Sulphur Springs, in Greenbrier county, and that W. A. Stuart, being the highest bidder for all of said properties, became the purchaser thereof at the following prices, viz:

1st. The Greenbrier White Sulphur Springs property proper—that is to say, a tract of about 7,000 acres of land, upon which are located the hotel, springs, cottages, and all the other improvements of said company, excepting therefrom a certain lot of two (2) acres, with the privilege of the water mentioned below; the Calwell cemetery, about one-fourth of an acre, and the Methodist and Episcopal churches,

with the lots on which they stand, and which belong with
36 said churches, and subject to the right of one E. F. Wicker to remove a frame building heretofore erected by him on said property, near the James river and Kenawha turnpike—at the price of $325,000 (three hundred and twenty-five thousand dollars).

2nd. The interest of said company, an undivided moiety, in a tract of about 2,800 (twenty-eight hundred) acres of land in Alleghany county, Va., at the price of $500.00 (five hundred dollars).

3rd. A small tract of 11.12 acres of land, known as "Atkinson" land, in Greenbrier county, on Howard's creek, joining the lands of George Grant and others, at the price of $200.00 (two hundred dollars).

4th. All the personal property of every kind belonging to the said company and mentioned in the report of Comm'r Leake, filed on the 10th day of June, 1887, at the price of $30,000.00 (thirty thousand dollars).

5th. A lot of two acres at the eastern entrance to the improved grounds, mentioned in said report of Comm'r Leake and more fully described in a second report of said comm'r, filed on the same day, with the right, as a perpetual privilege and easement appurtenant to said lot, to use for drinking purposes only the waters of the white sulphur spring on the tract first above named, at the price of $25,000.00 (twenty-five thousand dollars).

And that all of said sales amounted in the aggregate to the sum of $380,700.00 (three hundred and eighty thousand seven hundred dollars).

And it appearing, further, from said report that after said commissioners had first deducted from each of said sums ten per centum thereof, as required by said decree of July 20th, 1887, and which ten per centums aggregated the sum of $38,070.00 (thirty-eight thou-
sand and seventy dollars), the said W. A. Stuart, the purchaser
37 as aforesaid, executed for the balances thus left the following bonds and notes, all dated Sept. 15, 1887, and with the interest to accrue thereon added to and included in each from its date to its maturity, viz:

1st. For the balances of the $325,000 bid for the said 7,000 acres and of the $500 bid for the half of said 2,800 acres, which were thrown together, because they stand in the same relative position as to the debts and liens thereon, five bonds:

One bond due one year after date, with Geo. W. Palmer as security, for	$62,105 40
One bond due two years after date for	65,620 80
One bond due three years after date for	69,136 20
One bond due four years after date for	72,651 60
One bond due five years after date for	76,167 20

2nd. For the balance of the $30,000 bid for the personal property, three notes, negotiable and payable at the Bank of Lewisburg, all endorsed by Geo. W. Palmer, and due and payable at six, twelve, and eighteen months, respectively, viz:

One note for	$9,270 00
" " "	9,540 00
" " "	9,810 00

3rd. For the balance of the $25,000 bid for the said two acres and of the $200 bid for the said 11.12 acres as aforesaid, which were thrown together, because they occupy the same relative position as to the debts, five bonds, as follows:

One bond due one year after date, with Geo. W. Palmer as surety, for	$4,808 16
One bond due two years after date for	5,080 32
One bond due three years after date for	5,352 48
One bond due four years after date for	5,624 64
One bond due five years after date for	5,896 80

And that said commissioners have inquired and satisfied themselves as to the solvency and sufficiency of the said Geo. W. Palmer
38 as surety and endorser as aforesaid.

And it appearing, further, from said report as to the ten per centum of the amount of said sales, which was required by said decree to be paid in cash, that the said purchaser, W. A. Stuart, represented to said commissioners and satisfied them that he was the holder and owner of a very large amount of the debts which are first liens upon said properties and to which the surplus of said cash payment which would remain after paying the costs of suit and expenses of sale would be applicable, and that he insisted that it would be not only useless, but a hardship upon him to compel him to pay all of said sum in cash, as it would necessarily remain idle for a longer or shorter time, and then, to a large amount at least, be repaid to him upon his said debts, and that he, therefore, proposed to pay to the said commissioners on account of said cash payment, by a certificate of deposit in a national bank, a sum estimated as sufficient to discharge all of said costs and expenses, and to place in the hands of said commissioners, of said preferred debts, a sum equal to the balance of said ten per cent., and that the commissioners deemed this reasonable and proper, and agreed to and accepted this proposition conditionally—that is, subject to the action and approval of the court and upon a distinct agreement and understanding with said Stuart that they would report their action in this behalf and their departure from the strict and exact requirements of said decree, and that in case the court did not approve such action that then and in that event they would return to him said evidences of debt, and that he would then pay in and substitute therefor an equal amount of money, and that in pursuance of this agreement the said Stuart has paid, by a certificate of deposit in the People's National Bank of Lynchburg, Va., the sum of $13,070.00 to said commissioners and has turned over to them of said first-lien debts a sum exceeding $25,000, the two making more than the sum of $38,070, the
39 amount of said ten per centum; and it also appearing that said commissioners ask and recommend that this agreement and the settlement in pursuance thereof may be ratified and ap-

proved; and it appearing, further, from said report that the said commissioners are of opinion that said properties if resold will not sell for any greater prices, and that they recommend that the said sale made by them as aforesaid shall be confirmed; and it appearing, further, from said report that one of said commissioners, Alex'r F. Mathews, before said sale was made and before acting under said decree of July 20th, 1887, executed and filed a bond, as called for by said decree, in the penalty of $50,000, with security, and that the same was submitted to and approved as sufficient by one of the judges of this court and a statement of the expenses attending said sale being appended to said report, upon consideration of all of which it is hereby adjudged, ordered, and decreed that the said report and sales and the said settlement and adjustment of the said cash payment made by the said commissioners and their departure from the exact and strict requirements of the said decree of July 20th, 1887, be, and they are hereby, in all respects ratified, approved, and confirmed.

And it is further adjudged, ordered, and decreed that the said bonded commissioner, Alex. F. Mathews, out of said cash payment pay the costs of advertising sale.

And it is further adjudged, ordered, and decreed that the said commissioner, A. F. Mathews, shall retain the said sale bonds and notes, subject to the future order of the court, when the questions raised by the exceptions taken to the report of Commissioner Leake shall have been settled and amounts and priorities of the debts fixed.

And A. L. Boulware, the receiver in this cause, is hereby directed to turn over and deliver to Wm. A. Stuart all of the real and personal property purchased by him, as hereinbefore set forth, and when he shall have delivered the same to said Stuart he shall be relieved from further responsibility therefor, but is retained as receiver for other purposes in this cause.

And it is further ordered that the receiver settle his accounts, with convenient speed, before the auditor of this court.

And the further consideration of this cause is continued until the 9th day of February next.

The following account of the receiver was filed in the clerk's office in pursuance of the foregoing order:

The Greenbrier White Sulphur Springs Company in Acc't with A. L. Boulware, Receiver.

1886.				1886.		
Jan. 23	To cash allowed Stuart under decree of this date for repairs, &c., made by him	2,837 96		Jan'y 1	By balance, as per last settlement before Com'r Dellicker	795 91
23	To cash allowed ditto for new supplies made necessary by wear and tear, ½ of amount	952 02		" 23	By am'ts allowed: Wm. A. Stuart on account rent, repairs, &c., by decree	2,837 96
Feb. 1	To cash, expenses of receiver to Parkersb'g to settle his acc't	55 00			½ of new supplies bought, table-ware, linen, &c.	952 02
3	To cash p'd Tazewell Ellett, Esq., under order of January —, 1886	500 00		Feb'y 2	By cash rec'd of Wm. A. Stuart for 12 horses sold to him	900 00
3	To cash p'd E. H. Fitzhugh, Esq., under order of January —, 1886	1,000 00		2	By cash rec'd from Wm. A. Stuart on acc't of rent	600 00
13	To cash p'd G. W. Atkinson, late U. S. marshal, under decree of Feb'y 10th, '86	28 50		July 2	By cash rec'd, rent	5,000 00
Mar. 5	To cash p'd N. W. Bowe, auctioneer, com'ns for renting Springs and for advertising same	127 10		1887. Jan. 13	By " " "	3,298 06
				13	By " " "	146 24
12	To cash p'd B. F. Eakle for services and for sums paid out by him in caring for the property	570 00		Feb. 10	By " " "	1,000 00
				10	By am'ts allowed: Under decree (entered July 20th, '87) for repairs, &c., made by him	6,579 56
June 24	To cash p'd Jos. Fudge, treasurer, taxes on Co.'s lands in Alleghany Co., Va.	16 00			For new supplies, made necessary by wear and tear	1,568 70
July 7	To cash p'd Alderson & Atkinson on acc't insurance	2,500 00		April 26	By cash rec'd from Wm. A. Stuart, acc't rent for 1886	7,407 00
41						
July 14	To cash p'd L. R. Page on acc't of fees	500 00		Aug. 1	By cash rec'd from Davenport & Co., int. on loan of $6,500	102 92
Aug. 9	To cash p'd, bal. due for insurance (A. & A.)	1,916 25				
" 23	To cash p'd, exp. of receiver to attend taking of depositions before com'r at Springs	30 00				
Oct. 27	To cash p'd Alderson & Atkinson, ins. premium	40 00				
1887.						
Jan'y 13	To cash p'd, taxes in Greenbrier Co., W. Va.	3,298 06				

The Greenbrier White Sulphur Springs Company in Acc't with A. L. Boulware, Receiver—Continued.

Jan'y	13	To cash p'd, taxes in Alleghany Co., Va.	146 24				
Feb.	10	To allowance to Stuart under decree	$1,568 70				
		Repairs	6,579 56				
			8,148 26				
Feb.	10	To cash p'd Tazewell Ellett under decree 1, 29, '87	313 84				
	11	To cash p'd W. J. Leake under decree 1, 29, '87	172 21				
	18	To cash p'd L. R. Page, expenses to 1, 29, '87	25 00				
M'ch	26	To cash p'd B. F. Eakle for care of property	570 00				
July	13	To p'd Alderson & Atkinson on acc't ins.	2,500 00				
	16	To cash p'd L. R. Page, exp. to Parkersburg	50 00				
	25	To cash p'd, telegram	55				
Aug.	8	To cash p'd, bal. due for insurance, to A. & A.	1,733 05				
Sep.	17	To cash, exp. of receiver to sale	12 50	1888.			
Oct.	7	To cash p'd Tazewell Ellett under order of court	103 33	Feb'y	7		
	28	To cash p'd L. R. Page on acc't of allowance	200 00	Mar.	28		
Nov.	7	To cash p'd N. W. Bowe for advertising sale of Springs and his com'ns	95 00	Apr.	3	By cash received of Wm. A. Stuart, his share of insurance, paid by me, running from —	2,000 00
Dec.	10	To cash, expenses of counsel, L. R. Page, to Baltimore	50 00			By cash from Wm. A. Stuart on acc't of rent	1,500 00
1888.							
Jan'y	9	To cash, expenses of receiver to Baltimore	34 00			By cash from Wm. A. Stuart on acc't of rent	1,500 00
Feb.	6	To cash p'd for telegram to J. C. Alderson & Co.	37				
	11	To cash p'd, exp. of counsel to Balto.	20 00				$36,188 33

	14	To cash p'd H. H. Marshall on acc't of fee allowed him by the court in Knabe vs. Greenbrier W. S. Springs Co. under decree of Feb'y 11th, 1888	1,000 00		Am't forward	$36,188 33
					Less	795 91
42						
	14	To cash p'd Tazewell Ellett, ditto	1,000 00			
Mar.	28	To cash p'd Tazewell Ellett, balance of allowance under decree of Feb. 11th, 1888	1,500 00			
Apr.	16	To cash p'd, bal. due H. H. Marshall, ditto	1,500 00			
"	16	To cash p'd, expenses of receiver to New York in regard to claims of Springs Co. against W. P. Thompson on acc't of stock subscription	45 00			
		Expenses of L. R. Page & receiver to Baltimore and of receiver to Parkersburg	60 00			
			$33,650 24			$35,392 42

And on another day, to wit, on the 11th day of February, 1888, the following order was made and entered of record, to wit:

W. A. STUART *et als.*
vs.
GREENBRIER WHITE SULPHUR SPR'GS CO. *et als.*

WILLIAM KNABE & CO., Who Sue, &c.,
vs.
THE GREENBRIER WHITE SULPHUR SPR'GS CO. *et als.*

THE GREENBRIER WHITE SULPHUR SPR'GS CO.
vs.
W. A. STUART *et als.*

} In Chancery.

These causes came on again this day to be heard together, and were argued by counsel; upon consideration whereof the court doth adjudge, order, and decree as follows:

First. That the deed of trust executed by the Greenbrier White Sulphur Springs Company to W. W. Gordon and Isaac H. Carrington, trustees, on the 6th day of April, 1882, for the purpose of securing an issue of four hundred (400) coupon bonds of the said company for five hundred ($500.00) dollars each, aggregating two hundred thousand dollars ($200,000.00), is null and void, and
43 that said deed does not constitute any lien whatever on the property thereby conveyed; and, second, that the bill of W. A. Stuart and others in the first of these causes be dismissed with costs, to be paid by the plaintiff, W. A. Stuart; and, third, that A. L. Boulware, who was appointed and duly qualified as receiver in the first cause here now dismissed, be, and he is hereby, appointed receiver in the second and third of these said causes for the purposes hereinafter indicated, but the said receiver, before acting as such, shall give bond in the penalty of $30,000, with surety, to be approved by one of the judges of this court, conditioned for the faithful discharge of his duties as such receiver, but this order of appointment shall not affect or impair the power or authority of said receiver, Boulware, in the discharge of any duties yet unperformed as receiver under his appointment heretofore made in the first of these causes; and, fourth, that the exceptions taken and filed by W. A. Stuart and Johnson N. Camden, respectively, to the report of the commissioner, W. J. Leake, so far as it ascertains and reports a liability upon the original stockholders of the defendant company for unpaid stock, be, and the same are hereby, overruled, and that said report which states and fixes the amount of said liability on said original stockholders, who are W. A. Stuart, Geo. L. Peyton, H. M. Mathews, J. N. Camden, and W. P. Thompson, as follows, the said W. A. Stuart, $18,937.08; the said George L. Peyton, the like sum of $18,937.08; H. M. Mathews, the sum of $19,937.08; Johnson N. Camden, $9,495.12; Wm. P. Thompson, $9,441.96, making the total indebtedness of the said original stockholders on account of their unpaid subscriptions to the capital stock of said company $76,748.32, as of

the 30th of December, 1880, from which time the said several sums bear interest at the rate of 6 per centum per annum until paid, be approved and confirmed; and, fifth, that the said W. A. Stuart, George L. Peyton, Johnson N. Camden, and Wm. P. Thompson do pay to the said Greenbrier White Sulphur Springs Company the said
44 several sums ascertained to be due from them as aforesaid, with interest on each of said sums from the 30th day of December, 1880, until paid, and that J. W. Mathews, administrator of H. M. Mathews, who is now deceased, out of any assets in his hands belonging to the estate of his intestate, do pay to the said company the said sum ascertained to be due from said intestate, with like interest, and that A. L. Boulware, the receiver in the second and third of these causes, is authorized and directed to collect the said several sums of money from the said several parties against whom they are decreed as aforesaid by suit or any legal proceedings which he may be advised to take either in this district or elsewhere, and to use the name of the Greenbrier White Sulphur Springs Company in such proceedings or suits, or he may institute such suit or other legal proceedings in his own name, as receiver in the 2nd and 3rd of these causes, as he may be advised; and, sixth, that the exceptions taken by the unsecured creditors to the report of Com'r Leake, so far and because it reports and allows certain judgments prior to April, 1883, and also certain other judgments of the April term, 1883, of the circuit court of Greenbrier county as preferred liens according to their respective dates and amounts upon the two acres in the bill and proceedings mentioned, be, and they are hereby, overruled, and the said report in allowing said judgments on such liens be, and it is hereby, confirmed; and, seventh, that so much of the amount reported in favor of W. A. Stuart as a vendor's lien against the said defendant company and upon its real estate as will still remain unpaid after the application thereto of so much of the net proceeds of the sale of said real estate as is applicable thereto shall stand as an unsecured debt against said defendant company, and shall share ratably with the other general and unsecured debts in the assets of said company applicable thereto; and, eighth, that W. A. Stuart, for the debts against said defendant company
45 which were turned in by him upon the purchase of bonds and stock under the deed of trust of April 6, 1882, and which deed and the bonds issued thereunder have been set aside and annulled shall stand in like manner and to the extent of said debts as an unsecured creditor, and shall share ratably with other debts of the unsecured and general class in the assets of said company applicable thereto.

The exception taken by the unsecured creditors to the report of Commissioner Leake, so far as it reports and allows a preferred debt in favor of John W. Kerr for the sum of $20,000 on account of the bonds of said company claimed to be owned by him, is hereby sustained, and said report in favor of said Kerr is hereby overruled and set aside; but it further appearing that Thos. Branch & Co., who hold the said bonds as collateral security for the note of said Kerr, have paid for said bonds in part by the surrender to the said

White Sulphur Springs Co. of $7,140.08 of the debt due by said company to Thos. Branch & Co. and for the residue by the payment to said company of the sum of $12,858.92 in cash, it is further ordered that for the said sum of $20,000 and interest on the same from the date of its payment as aforesaid, to wit, May 3rd, 1882, said Thomas Branch & Co. are entitled to stand as unsecured creditors, entitled to share ratably with other creditors of the same class in all funds applicable to the payment of such claims.

And the court doth overrule the exception of counsel for general creditors in respect to amount reported by the commissioner in favor of W. A. Stuart for insurance and labor paid by him.

And A. L. Boulware, receiver in the first of these causes, is directed to pay over any and all monies in his hands to the credit of these causes to the register of this court; and the said register shall pay said fund when thus paid in, to the extent of 80 per cent. thereof, which represents the proportion of said fund that
46 accrued from the rental of the real estate of the defendant company upon the debt reported and allowed by Com'r Leake in favor of the Bank of Lewisburg, and which is the first lien upon the said fund to the said extent of 80 per centum thereof; and the said report of Comm'r Leake as to said debt in favor of the Bank of Lewisburg is hereby approved and confirmed, and the commissioners of sale are hereby directed to pay all such securities and cash as they may now hold, being the proceeds of the sales made by them, into the registry of the court; and the purchaser of the properties sold in this cause shall pay the purchase-money for the same as it falls due and payable into the registry, but the said register is hereby authorized and empowered to accept and receive from such purchaser, on account of the amount due from him as aforesaid, as cash, such evidences of debt against said company as would be entitled to be paid with said purchase-money when and if it were paid in cash into the registry of the court.

And the report of Com'r W. J. Leake, filed in this cause, so far as it has not been modified or overruled by this decree, is hereby in all respects approved and confirmed.

And it is further adjudged, ordered, and decreed that the register of this court, out of the money to be paid to him by the commissioners of sale, pay to each of said commissioners the sum of one thousand dollars as their commission and compensation in this behalf, and that he also out of this fund pay all the costs of these suits and the expenses, in addition to said commissions, attending said sale, to be audited and taxed by him, except the costs in the first of these suits, to be taxed separately, and which are to be paid by the plaintiff therein, W. A. Stuart, as aforesaid; and it appearing to the court that W. A. Stuart, the purchaser of the real estate of the Greenbrier White Sulphur Springs Company under decree in these causes, has sold a church lot of about one acre, outside of the
47 lawn enclosurers of said Springs property, at the price of four hundred dollars, for the use of the Catholic church, to be used for church purposes only, and to revert to him when it ceases to be so used—

It is further adjudged, ordered, and decreed that upon the payment of said sum into the registry of this court, then Alex. F. Mathews, who is hereby appointed a special commissioner for the purpose, shall convey the said lot to the purchaser thereof, or to such person as he may direct, by deed, with conditions and reservations as agreed between said Stuart and the said purchaser from him as aforesaid, with special warranty of title, free and discharged from any lien for purchase-money due from the said W. A. Stuart on his purchase under said decree for which the grantee in said deed shall pay him a fee of ten dollars.

The bond of the receiver called for by the decree above is in words and figures as follows, to wit:

Know all men by these presents that we, A. L. Boulware and I. Davenport, Jr., are held and firmly bound unto the United States of America in the sum of thirty thousand dollars; to the payment whereof, well and truly to be made to the said United States of America, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, hereby waiving the benefit of our homestead exemption as to this obligation, and any claim, right, or privilege to discharge any liability arising under this bond or by virtue of said office or trust, in any currency, funds, counter-claims, or offsets other than legal-tender currency of the United States. Sealed with our seals and dated this 1st day of March, one thousand eight hundred and eighty-eight.

The condition of the above obligation is such that if the above-bound A. L. Boulware shall faithfully perform the duties of
48 his office or trust as receiver under a decree of the United States circuit court for the district of West Virginia, pronounced on the 10th day of February, 1888, in the suit therein depending under the name and style of Wm. Knabe & Co., who sue, &c., *vs.* The Greenbrier White Sulphur Springs Company and *als.* and The Greenbrier White Sulphur Springs Co. *vs.* Wm. A. Stuart and *als.*, that this obligation to be void otherwise to remain in full force and virtue.

(Signed) A. L. BOULWARE. [SEAL.]
(Signed) I. DAVENPORT, JR. [SEAL.]

STATE OF VIRGINIA, } *To wit:*
City of Richmond, }

This day I. Davenport, Jr., surety on the above bond, made oath before me, a notary public in and for the city and State aforesaid, that his estate, after the payment of all his just debts and those for which he is bound as security for others and expects to have to pay, is worth the sum of thirty thousand dollars.

Given under my hand this 1st day of March, 1888.

(Signed) EDGAR W. CARRINGTON,
Notary Public.

(Endorsed:) "This bond is approved. Hugh L. Bond, circuit judge."

And on another day, to wit, on the 7th day of March, 1888, the following order was made and entered of record, to wit:

W. A. STUART, &c.,
vs.
GREENBRIER WHITE SULPHUR SPRINGS CO.

GREENBRIER WHITE SULPHUR SPRINGS CO.
vs.
W. A. STUART *et al.*

and

WM. KNABE & CO., Who Sue, &c.
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. *et al.*

In Equity.

49 A. L. Boulware, receiver in these causes, this day filed his report of the settlement with the lessee of the property in the proceedings mentioned.

The report referred to in the foregoing order is in words and figures as follows, to wit:

W. A. STUART, &c.,
vs.
THE GREENBRIER WHITE SUL. SPR'GS CO.

To the hon. judges of the United States circuit court for the district of W. Va.:

The undersigned receiver respectfully makes to the court the following report:

Mr. W. A. Stuart, the lessee of the property of the Greenbrier White Sulphur Springs Company for the last season, has paid on account of his rent the sum of thirty-four hundred and thirty-five and $\frac{66}{100}$ dollars ($3,435.66), the said sum being the amount of taxes on the property for the year 1887.

Besides this he has presented to the receiver an account, filed herewith, marked "Exhibit W. A. S., 1887," for labor and for repairs to the property, amounting to forty-eight hundred and fifty-seven and $\frac{95}{100}$ dollars ($4,857.95). After investigating the account the receiver is convinced that the said amount was expended for labor and repairs that were absolutely necessary for the preservation of the property. He therefore thinks the same ought to be allowed as a credit upon the rent due by the said lessee, as has been done during each year of the receivership.

The said lessee has also presented to the receiver an account, also filed herewith, and marked "W. A. S., 1887," of furniture and furnishings bought by him for the year 1887, amounting to four
50 thousand and seventy-seven and $\frac{59}{100}$ dollars ($4,077.59). These articles the lessee claims were necessary in consequence of the deficiency occasioned by the natural wear and tear of the furniture. In the case of a similar account presented by the lessee for each year

of the receivership the court has allowed a credit of one-half of the amount expended, upon the condition that the articles so purchased should be the property of the Springs Company. The lessee is willing to make the same settlement this year, and the receiver has agreed to it, subject to the approval of the court.

If these credits are allowed the lessee will still owe a balanoe of ($9,667.60) nine thousand six hundred and sixty-seven and $\frac{60}{100}$ dollars, which amount the lessee expresses himself ready to pay, if the said credits are allowed, when required to do so by the court.

Respectfully submitted,

(Signed) A. L. BOULWARE, *Receiver.*

And on another day, to wit, on the 11th day of June, 1888, the following order was made and entered of record, to wit:

WILLIAM A. STUART *et al.*
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. *et al.* } In Equity.

The clerk of this court, who was appointed to audit and report upon the accounts of A. L. Boulware, receiver in this cause, this day presented his report, which was ordered to be filed.

The report of the clerk referred to in the foregoing order is in words and figures as follows, to wit:

To the judges of the circuit court of the United States for the district of West Virginia:

The undersigned, who was appointed by the court to audit,
51 state, and settle the accounts of A. L. Boulware, who was appointed a special receiver in the case of Wm. A. Stuart and others against The Greenbrier White Sulphur Springs Company and others, begs leave to submit the following statement of the account:

I find that the receiver has received in cash from sales of personal property and rents		$70,106 35
That he has produced vouchers and accounts before me to the amount of		67,568 26
Leaving a balance of cash in his hands of		2,538 09
In addition to this he shows that there is due from W. A. Stuart a balance of rent for the year 1885 of	$6,457 95	
Interest thereon from December 1st, 1885, to June 1st, 1888	968 69	
For rents of 1886	44	
For rents of 1887	$6,667 60	
Making a total due receiver from Stuart		14,094 68
		$16,632 77

(Afterwards paid by Stuart, $14,553.86.)

All of which is respectfully submitted.

(Signed) L. B. DELLICKER, *Clerk.*

Parkersburg, W. Va., June 11th, 1888.

52 And on another day, to wit, on the 5th day of February, 1889, the following petition was filed in the clerk's office of said court:

In the Circuit Court of the United States for the District of West Virginia, at Parkersburg.

W. A. STUART *et al.*
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. *et al.*

KNABE & CO. *et al.*
vs.
SAME.

To the honorable judges of said court:

Your petitioner, A. L. Boulware, respectfully shows that he was appointed the receiver of the property and effects of the defendant company by an order entered in the first of the above-mentioned causes on or about the — day of April, 1883, and, as required by said order, gave bond with security in the penalty of $50,000, conditioned according to law. He further shows that during his said receivership, acting under authority from this honorable court, he rented out the property for five successive seasons, and has been entitled to receive from said rents more than one $100,000, all of which has been accounted for except the receipts from the last year's renting. The receipts and disbursements for that year have been reported to the court, and as soon as his report, filed on the 6th of November, 1888, shall be acted upon by the court, which he prays may be speedily done, he is ready to submit his accounts for that year to the auditor appointed in this cause to examine and settle same.

Your petitioner's duties as such receiver were terminated by an order of the court herein entered on the — day of ——, 18—.

53 His services in that capacity have been arduous and exacting. By an order entered in these causes he was allowed the sum of $3,500 on acc't for those services. He further represents that he is desirous to settle with Leigh R. Page, Esquire, his counsel, for professional services rendered to him with diligence and fidelity during the whole of said receivership.

He has paid him on that account the sum of $2,500, all but $700 of which sum was paid to him in the fall of 1885 under a special order of the court.

In consideration of the premises your petitioner prays the court to allow him and his said counsel such further compensation for their said services as to it may seem reasonable and proper; and your petitioner will ever pray, etc.

(Signed) A. L. BOULWARE.

And on the same day, to wit, on the 5th day of February, 1889, the following order was made and entered of record, to wit:

W. A. STUART *et als.*
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. *et als.*
and
WM. KNABE *et al.*
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO. *et als.*
} In Equity.

These causes came on this day to be further heard upon the petition of A. L. Boulware, receiver herein, this day filed, praying compensation for his services as such receiver, and also praying compensation to Leigh R. Page, Esquire, for his services as counsel to said receiver, and was argued by counsel. On consideration whereof it is ordered that the sum of four thousand five hundred ($4,500.00) dollars be, and the same is hereby, allowed to the said Boulware in full compensation for his said services, and the sum of two
54 thousand ($2,000) dollars be, and the same is hereby, allowed to the said Leigh R. Page in full compensation for his services as counsel to said receiver.

And it is further ordered that such sum shall be paid from the funds to the credit of these causes in the registry of the court.

And on another day, to wit, on the 9th day of February, 1889, the following order was made and entered of record, to wit:

WILLIAM A. STUART
vs.
THE GREENBRIER WHITE SULPHUR SPRINGS CO.
} In Equity.

On motion of William A. Stuart, the plaintiff in this cause, an appeal is allowed him from the decree entered in this cause on a former day of this term making additional allowances to A. L. Boulware and Leigh R. Page, the receiver and his counsel in this cause, to operate as a supersedeas upon the said William A. Stuart or some one for him giving a bond with good security, to be approved by one of the judges of this court, in the penal sum of two thousand dollars, conditioned according to law.

Thereupon the said William A. Stuart filed the following bond in the clerk's office of said court:

Know all men by these presents that we, Wm. A. Stuart and George W. Palmer, are held and firmly bound unto A. L. Boulware and Leigh R. Page in the full and just sum of two thousand dollars, to be paid to the said A. L. Boulware and Leigh R. Page, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 6th day of February,
55 in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a circuit court of the United States for the district of West Virginia, held at Parkersburg, in said district, in a suit depending in said court, between William A. Stuart and the Greenbrier White Sulphur Springs Company and others, a decree was rendered against the said William A. Stuart, who is both plaintiff in the action and creditor of said defendant company; and the said William A. Stuart having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit and a citation directed to the said A. L. Boulware and Leigh R. Page, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said William A. Stuart shall prosecute said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) W. A. STUART. [SEAL.]
(Signed) GEO. W. PALMER. [SEAL.]

Sealed and delivered in presence of—
HENRY CHAPMAN,
CHAS. F. PALMER,
As to Geo. W. Palmer.
Sealed and delivered in presence of—
B. F. EAKLE,
J. M. BOOKER,
As to W. A. Stuart.

Approved by J. J. Jackson, U. S. dist. judge, W. Va., as a supersedeas bond.

56 I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a true copy from the records and files of my office of all the proceedings connected with the appointment, services, and orders for compensation of A. L. Boulware as receiver, now on file and of record in my office, in the case of William A. Stuart *vs.* The Greenbrier White Sulphur Springs Company, W. W. Gordon, and Isaac H. Carrington, trustees.

Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Parkersburg, in said district, on this 27th day of August, A. D. 1889.

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

Endorsed on cover: West Virginia C. C. U. S. No. 1495. William A. Stuart, appellant, *vs.* A. L. Boulware and Leigh R. Page. Filed October 29, 1889.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1495.

WILLIAM A. STUART, APPELLANT,

vs.

A. L. BOULWARE AND LEIGH R. PAGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Brief of Appellant in Opposition to the Motion of the Appellees to Dismiss or Affirm.

JOHN E. KENNA,
M. F. MORRIS,
Of Counsel for Appellant, Wm. A. Stuart.

JUDD & DETWEILER, PRINTERS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1495.

WILLIAM A. STUART, APPELLANT,

vs.

A. L. BOULWARE AND LEIGH R. PAGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Brief of Appellant in Opposition to the Motion of the Appellees to Dismiss or Affirm.

1.

The present appeal, which is merely an offshoot from the main case, also here on appeal (Stuart *vs.* Camden, No. 834 on the docket of the present term), is from an order or decree of the circuit court allowing $6,500 to the receiver (A. L. Boulware) that had been appointed in the case, as compensation for himself and his counsel.

It is true that the court splits up the amount of the allowance, and awards $4,500 to the receiver personally, and $2,000

to Page as his counsel; and it is true, as claimed by counsel in the present motion, "that an appellant cannot unite separate and distinct interests for the purpose of making up the amount necessary to give jurisdiction" to this Court; but it is equally true that an interest in itself one and indivisible cannot properly be split up into several apparently distinct interests for the purpose of defeating the jurisdiction; and this is precisely what has been attempted in this case.

Mr. Page was not a party to this suit, and he had no standing whatever in the case, either as counsel for the receiver or otherwise. It may be proper for a receiver to employ counsel, although this record fails to show wherein there was either necessity or propriety for the appointment of such counsel; but when counsel is employed his relations are with the receiver, and not either with the court or with the case. It has not been unusual, it is true, for the court to allow reasonable counsel fees to a receiver, and to allow them distinctly as such; but the allowance is to the receiver and not directly to the counsel; and the receiver is not permitted to bring in his counsel by name, and by having the allowance made directly to him thereby to evade the appellate jurisdiction. Counsel fees constitute only one of the items in his account on which he claims and should receive compensation; and it would be just as reasonable to separate this from the rest of his account as it would be to set apart an item for traveling expenses, so as to reduce the amount and prevent, if possible, the appellate jurisdiction from attaching.

The appellees, therefore, are wrong in their contention that they had separate and distinct causes of action. On the contrary, the counsel in the case had no cause of action at all, no standing in the case, and no claim whatever against the fund, and the allowance to him is an allowance to the receiver to enable the receiver to compensate him for his professional services.

We have no desire to controvert the rule frequently laid down by this Court, that the appellate jurisdiction of the

Court cannot be maintained by the joinder of separate and distinct claims, no one of which is sufficient to give the jurisdiction. Our position is, that the jurisdiction cannot be defeated by the improper action of the court below in breaking up a single claim into two apparently separate demands.

2.

It is objected, in the second place, that the record fails to show that the appellant Stuart claims an interest sufficient in amount to give this Court jurisdiction.

It is true, as stated, that Stuart alone appears as appellant on this record. And it is also true that he filed the suit on behalf of himself and other creditors of the company defendant. But it appears from the record, further, that he claimed "that he was the holder and owner of a very large amount of the debts which are first liens upon said properties and to which the surplus of said cash payment, which would remain after paying the costs of suit and expenses of sale, would be applicable" (Rec., p. 27). He claimed a vendor's lien upon some part of the property held by the defendant company (Rec., p. 33), as well as other claims; and it appears that he claimed that when the property of the company was sold for $380,700, and ten per centum of that sum, or the sum of $38,070, was required to be paid in cash, all of this sum, except the costs of suit and the expenses of sale, would be repaid to him (Rec., p. 26, 27); and the costs of suit and expenses of sale, as appears from the receiver's accounts in the case (Rec., p. 30, 31), constitute but a small fraction of the ten per centum; so that even from this fragmentary record it is apparent that the appellant's interest, or claim of interest, includes the whole amount of this allowance to the receiver for himself and his counsel, and that appellant's claim excludes all other claims, and is not merely a share of interest or a distributable interest.

But the record of the main case, of the whole case in fact, is now in this Court (Stuart *vs.* Camden *et al.*, No. 834); and from that record it is plain that the whole amount of this allowance is within the individual claim of the appellant.

3.

The joinder of a motion to affirm with a motion to dismiss makes it incumbent on the appellant to go into the merits of the case to some extent.

The ground of the appeal is that the allowance to the receiver was excessive and unreasonable. We agree that the court below should have a reasonable discretion in the matter of such allowances, as stated by this Court in the cases cited by the appellees (Trustees *vs.* Greenough, 105 U. S., 537); but in the same case it is held that such allowances should not be unreasonable or excessive; and Mr. Justice Miller strongly stigmatizes as one of the grossest judicial abuses of the present day the absorption of property under the control of a court by the allowance of attorney's fees and other expenses. That the amount allowed in this case is unreasonable and excessive will appear very plainly from the fact that the whole amount of the receiver's collections, as shown by his own two accounts in the record (pp. 14 to 19 and 29 to 31) is $70,106.35, not over $100,000, as stated in the brief on the motion filed by the appellees, and that out of this sum of $70,106.35 the sum of $11,800, or more than one-sixth, has been absorbed as expenses by the receiver and his counsel, for on October 26, 1885, the receiver was allowed $3,500 for himself and $1,800 for his counsel (Rec., p. 13), and on February 5, 1889, the allowance of $4,500 for himself and $2,000 for his counsel was made (Rec., p. 39), from which the present appeal was taken. This is an aggregate, as stated, of $11,800. If an allowance of $11,800 to a receiver out of a sum of $70,106.35 is a "*moderate*" amount, as claimed on behalf of the appellees, then it is time that the limit of moderation

should be more accurately determined, so that parties may be advised beforehand when they enter into contracts likely to involve in course of time the appointment of receivers by a court of equity, how much of their property is likely to be confiscated for the benefit of such receivers.

We have no desire and no purpose to depreciate in the slightest degree the professional services of counsel in this case; but, so far as this record goes, it does not show any professional services whatever rendered by counsel to the receiver, nor does it show that the receiver needed professional services. The fact may possibly be that such services were needed, and that valuable professional services were rendered, but the record fails to disclose any such fact; and, inasmuch as the record fails to disclose any such fact, it shows absolute want of consideration for the allowance and unreasonableness and excess in the total amount.

It is stated in the brief filed on behalf of the appellees that no objection was made to the allowances of $3,500 and $1,800 made on October 26, 1885 (Rec., p. 13). If these allowances were all, no objection would be made now. It is to the excessive accumulation of allowances that objection is made.

If, as might possibly be the inference, the sum of $4,500 allowed by the order of February 5, 1889 (Rec., p. 39), is intended to include the $3,500 allowed by the previous order and not to be additional thereto, the appellant would feel induced to acquiesce in it; but this is not the inference of the appellees, and apparently it is not the proper inference to be drawn from the order.

It is submitted, therefore, that there is no good ground either for the motion to affirm or for the motion to dismiss, and that the cause should be heard upon its merits.

JOHN E. KENNA,
M. F. MORRIS,
Of Counsel for Appellant, Wm. A. Stuart.

FILED
NOV 25 1889

Nov. 22, 1889.

Supreme Court of the United States.

WILLIAM A. STUART

vs.

A. L. BOULWARE and LEGH R. PAGE.

No. 1,495.

Motion to Dismiss or Affirm.

W. HALLETT PHILLIPS,
for Motion.

R. O. Polkinhorn, Printer, 632 & 634 D Street, N. W.

Supreme Court of the United States.

WILLIAM A. STUART

vs. — No. 1,495.

A. L. BOULWARE and LEGH R. PAGE.

Motion to Dismiss or Affirm.

The appellees in the above entitled cause move the Court, on the grounds stated in accompanying brief, to dismiss the appeal for want of jurisdiction, the value of the matter in dispute not being sufficient. They unite therewith a motion to affirm the decree appealed from, on the ground that, even if the court has jurisdiction, it is manifest that the appeal is without merit, and is taken for delay only.

W. HALLETT PHILLIPS,
for Motion.

To Counsel for Appellant:

Take notice that the above motion will be submitted three weeks after service hereof.

W. HALLETT PHILLIPS,
for Motion.

Brief.

1. This court is without jurisdiction to review the order appealed from, the amount in controversy not being sufficient.

The record is very fragmentary. It appears, however, that Stuart, the appellant, claiming to be a creditor of the Greenbrier White Sulphur Springs Company, filed a bill in the circuit court for the District of West Virginia, to enforce a mortgage given by the company.

Judge Bond appointed Mr. A. L. Boulware, receiver of the property.

Acting under the authority of the court, the receiver rented out the property for five successive seasons, and received from rents more than $100,000, all of which he accounted for.

His duties as receiver having terminated, he filed a petition in the cause of *W. A. Stuart et al.* vs. *The Greenbrier White Sulphur Springs Company*, for an allowance as compensation for his services as receiver.

He also represented in his petition, "that he was desirous to settle with Legh R. Page, his counsel, for professional services rendered to him with diligence and fidelity during the whole of said receivership," and he prayed for an allowance to said counsel as compensation for his services. (R. 38.)

The court ordered that the sum of $4,500 be allowed to Mr. Boulware in full compensation for his services, as receiver, and that the sum of $2,000 be allowed to Mr. Page in full for his services as counsel to the receiver: It was further ordered that such sums should be paid from the funds to the credit of these causes in the registry of the court. (R. 39.)

It is from this order that the appellant, Stuart, appeals.

No proposition has been more frequently announced by this Court, than that an appellant cannot unite separate and distinct interests for the purpose of making up the amount necessary to give jurisdiction.

In the present instance, two separate allowances were made; one to the receiver and one to counsel; neither of them separately amounts to $5,000. The fact that they aggregate more than the jurisdictional sum is not sufficient.

Nor can any support be drawn from the fact that the one allowance was to the receiver and the other to his counsel; and so the question involved is common to both.

The answer is that each of the parties in whose favor the separate allowances were made, had distinct causes of action, which, for convenience, were united in one petition, and distinct allowances were made in favor of the several parties.

In determining the question as to their right of recovery, each claim depended on its own facts. A recovery by one party did not necessarily involve a recovery by the other.

While the rights of both depended upon their showing a liability to be met out of the fund in court, neither could recover except by showing that there was owing to him individually a debt to which that fund was applicable. The appellant might have opposed the allowance of either of the claims on grounds peculiar to that claim.

This principle has been frequently applied by this Court to claims allowed and directed to be paid out of funds in court.

Where allowances had been made to various claimants out of a fund in court derived from the sale of a railroad, on appeal by the trustee for the first mortgage bondholders claiming the whole fund, it was held, that the appeal could not be entertained as to any of the defendants to whom an allowance less than $5,000 had been made.

Farmers' Loan and Trust Co. vs. *Waterman*, 106 U. S., 270;
Hassall vs. *Wilcox*, 115 U. S., 599.

Had the claims been disallowed, the appellees could not have sustained the jurisdiction by joining in an appeal, because they had separate and distinct interests. If the decree was several as to them, it was several as to their adversary.

Schewd vs. *Smith*, 106 U. S., 190.

All the previous cases are reviewed in *Gibson* vs. *Shufeldt*, 122 U. S., 27.

The propositions we have announced are there fully sustained.

2. If the first ground of dismissal was not so clear, the appeal would fall, for the reason that, even uniting the separate allowances, the record fails to show that the appellant claims an interest, sufficient in amount, to give this court jurisdiction.

The suit was prosecuted by him as a creditor of the company, "on behalf of himself and all other

creditors of the company who may come in and contribute to the costs of the suit."

Gordon and Carrington, trustees of the mortgage given by the company, and under which appellant claimed, were made parties complainant. (R., 4, 32.)

The appellant represents himself to be the holder of a large amount of the debts which are a first lien on the property. (R., 27.)

There were also a large number of other creditors. (R., p. 4, 33.)

The appellant, Stuart, alone appeals.

Whether the claims he holds are sustained or not, the only interest he could have in the sums allowed the appellees, is a pro rata interest.

If the sums had not been allowed to appellees, they necessarily must have been applied to the claims of the creditors.

In that event, could it be shown that the share of Stuart would exceed $5,000?

3. Even if the court has jurisdiction, it is manifest that the appeal is without merit, and is taken for delay only.

It seeks to bring into review an order of the court below, passed in the course of administration of a trust property in the custody of the court, making compensation for services to the receiver appointed by the court, and counsel employed under its authority.

The receiver was appointed by consent. (R., 1.)

For five years he managed a valuable property and collected more than $100,000 of rents. This property sold for $380,000, all of which passed

through the hands of the receiver. The legal assistance rendered necessary, was performed by counsel of the highest standing.

Considering the extent and importance of the services of these gentlemen, it must be admitted that the allowances made to them were very moderate. All they had received, in the course of the long litigation, previous to the allowances appealed from, was a payment on account to Mr. Boulware $3,500 and to Mr. Page $1,800. These allowances were not objected to. (R., 13.)

It may be admitted that, under exceptional circumstances, this Court will review allowances made to receivers and other officers of the court.

As said by this Court, however, it is a general principle that a trust estate must bear the expenses of its administration. Allowances of this kind, if made with moderation and a regard to the rights of those who are interested in the fund, are not only admissible, but agreeable to the principles of equity and justice.

> "The court below should have considerable latitude of discretion on the subject, since it has far better means of knowing what is just and reasonable than an appellate court can have. It is not shown in this case by the appellant that any of these allowances are excessive."
>
> *Trustees* vs. *Greenough*, 105 U. S., 537.

The record in the present case will be searched in vain to find any justification for this appeal.

The appellant should not be permitted to take advantage of the state of the docket, to keep the ap-

pellees for years, from receiving the moderate amounts decreed to them by the court, and to which they are clearly entitled.

If the appeal is not dismissed, the decree should be affirmed.

W. HALLETT PHILLIPS,
for Motion.

Office Supreme Court U. S.
FILED.
JAN 6 1890
JAMES. H. McKENNEY.
CLERK.

January 4, 1890.

IN THE

Supreme Court of the United States.

W. A. STUART

vs. } No. 1495.

A. L BOULWARE AND LEGH R. PAGE.

Reply of

W. HALLETT PHILLIPS,
For Motion.

R. O. Polkinhorn, Printer, 632 and 634 D Street.

IN THE

Supreme Court of the United States.

W. A. STUART

vs. } No. 1495.

A. L BOULWARE AND LEGH R. PAGE.

Reply Brief of W. Hallett Phillips on Motion to Dismiss or Affirm.

The proposition which appellant offers to the court, in support of the jurisdiction, is that the two allowances constituted in reality but one allowance in favor of the receiver, Mr. Boulware. Therefore, it is argued, the whole amount can be considered, and is sufficient.

This proposition, we submit, is no answer to the motion to dismiss.

The mere fact that but one petition was filed asking the allowances, is of no consequence. It was entirely proper for the receiver in calling the attention of the court to his own claim for compensation for services to also call attention to the claim of Mr. Page for services [redacted] performed on behalf of the trust.

The court could not do otherwise, when it admitted the claims, than to make separate allowances to each of these gentlemen. The one had no interest in the amount decreed to the other, and each claim stood on its own grounds.

The matter stands the same as if Mr. Page had filed a petition independent of Mr. Boulware, praying for an allowance for his own services as counsel.

Had he done so and had the court decreed him an allowance, would counsel assert that such allowance was really made to the receiver, and could, for the purpose of an appeal, be united with an allowance made to the receiver for his services?

2. It is hardly necessary, when the first ground for dismissal is so clear, to devote much consideration to the second ground, which is, that the appellant does not claim a sufficient interest to confer jurisdiction.

The only answer to this objection is that the appellant claimed, when the property was sold, that ten per centum of the proceeds of the sale "would be repaid to him." (Rec. 27.)

The fact that appellant claimed to be relieved, as purchaser of the property, from paying the whole of the ten per cent. cash payment, because he was the holder of a large amount of the debts of the company, falls far short of establishing that the pro rata interest of appellant in the sums now in dispute, exceeds $5,000.

It devolves upon appellant clearly to establish the jurisdiction from the record, and the question is not affected by the appellant terming his own record "fragmentary," nor by referring to the record in an-

other case now pending in this court, as showing the jurisdiction.

3. The answer made to the motion to affirm is that the allowances were excessive and unreasonable. The two allowances are treated as one allowance to the receiver for his services.

It is said that the record fails to show wherein there was either necessity or propriety for the appointment of counsel. That the record "does not show any professional services whatever rendered by counsel; that inasmuch as the record fails to show any such fact, it shows absolute want of consideration for the allowance."

This argument, we submit, fails to show that the appeal is not frivolous.

As to the allowance to the receiver, the case is presented to the court, of a property of great value managed by the receiver for many years to the satisfaction of the court and of the parties in interest. This management was complicated by conflicting interests, and, in the magnitude of those interests and the great responsibility, is to be compared to the case of a railroad managed by the court. In the course of such management, large sums of money passed through the hands of the receiver and heavy bonds had to be given by him.

He was encompassed on every side by litigation. With all the facts before him, the judge below, who administered the trust, made the allowance with a knowledge of the services which this court can never hope to obtain from a record which the appellant himself pronounces fragmentary.

Against the fairness of such allowance the appellant can only make an assertion that it is excessive.

As to the allowance to Mr. Page as counsel for the receiver, the objection made by appellant alone, against the necessity or validity of his employment, comes too late. Appellant, in common with the other creditors, had the benefit of such services. When in 1885 application was made to the court for their recognition by a part payment, then was the time for appellant to have made the objection. None was offered and the court made an allowance on account of services. (Rec., 13).

When that order was made, both the validity and necessity of the employment of counsel was established.

That the services of counsel were indispensible to the receiver need hardly be argued. No objection to the allowances were made in the court below untill after the decree and no denial of the facts stated in the petition.

The litigation involving the Greenbrier White Sulphur Springs was one of the most important ever brought in the Virginia courts. It was bitterly contested on all sides for many years; and he would have been a bold receiver who would have taken a single step in such a cause without previously acting on the advice of counsel.

The high reputation of the counsel employed shows that the court in its administration of the trust had the advantage of the best advice. In the petition laying the services before the court, no amount was asked, but its determination was left to the discretion of the court.

The appellate court in order to review this discretion should certainly have some better reasons offered than have been presented.

We submit that the motion is well taken.

W. HALLETT PHILLIPS,
For Motion.